

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested. Claims 1 and 5 are amended, and claims 1-10 are pending in the application.

Applicant acknowledges with appreciation that the rejections under 35 USC §§101 and 103 (as had been specified in the December 14, 2006 Final Action) have been overcome.

Claims 1 and 5 were rejected under 35 USC §112, second paragraph. The telephonic interview between Examiner Divecha and the undersigned on September 5, 2007 is acknowledged with appreciation. During the telephonic interview, agreement was reached that the foregoing amendments overcome the prior rejections of claims 1 and 5 under 35 USC §112, second paragraph as specified in the June 5, 2007 Office Action.

The §112, Second. Para. Rejection of Claim 4

Claim 4 stands rejected under 35 USC §112, second paragraph on the grounds that the trademark purportedly is identifying “a particular material or product.” This rejection is respectfully traversed, as use of the trademark “InfiniBand™” in the claims is not to identify “a particular material or product”, but rather to properly identify the *source* of the protocol, namely the InfiniBand® Trade Association (see, e.g., the InfiniBand® Trade Association website at “www.infinibandta.org/home” and “www.infinibandta.org/specs/”).

Section 2173.05(u) of the MPEP (Rev. 2, May 2004) explicitly states that “[t]he presence of a trademark or trade name in a claim is not, *per se*, improper under 35 U.S.C. 112, second paragraph” and cites *Ex parte Simpson* only for the instance where a trademark is used in a claim to identify or describe a particular material or product. See *Ex parte Simpson*, 218 1020, 1021-22 (Bd. Pat. App. & Inter. 1992) (claim scope uncertain as to material which forms the “Hypalon” membrane: question as to how much chlorosulphonated polythene must be present before infringement occurs). Respectfully, the statement in the rejection that the trademark is used to identify an InfiniBand™ network is inaccurate: claim 4 (and claim 6) each specify “detecting the acknowledgement *according to* InfiniBand™ protocol”

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Hence, the claims specify executing a network operation, namely “detecting the acknowledgement”, according to a prescribed specification identified as InfiniBand™: infringement would be determined based on whether the claimed operations operated according to the InfiniBand™ protocol that is promulgated and supported by the InfiniBand® Trade Association.

Consequently, *Ex parte Simpson* is distinguishable because the claims do not use the trademark to attempt to identify a particular material or product, but rather use the trademark to identify the protocol used in detecting the acknowledgement. One having ordinary skill in the art would appreciate that the InfiniBand™ protocol that is provided under the authority of the InfiniBand® Trade Association specifies a logical sequence of events that are to occur in order to reach a certain result.

Hence, one skilled in the art would recognize that the claims should be interpreted as performing operations or functions consistent with the InfiniBand™ protocol promulgated and supported by the InfiniBand® Trade Association.

Further, the MPEP not only permits use of trademarks having definite meanings in patent applications, but ***requires*** that the proprietary nature of the marks be respected (see, e.g., MPEP §608.01(v) at page 600-88 (Rev. 2, May 2004)).

For these and other reasons, the §112, second paragraph rejection of claim 4 should be withdrawn.

Terminal Disclaimer

A Terminal Disclaimer is concurrently submitted to overcome the obviousness-type double patenting rejection in view of U.S. Patent No. 7,085,869 in view of U.S. Patent No. 6,735,642 to Kagan.

In view of the above, it is believed this application is in condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a) or 1.20(d), to Deposit Account No. 50-0687, under Order No. 95-507, and please credit any excess fees to such deposit account.

Respectfully submitted,
Manelli Denison & Selter PLLC

A handwritten signature in black ink, appearing to read 'L R Turkevich', with a stylized flourish at the end.

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